IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 22, 2003

STATE OF TENNESSEE v. KENNETH STRICKLAND

Direct Appeal from the Judgment of the Circuit Court of Rutherford County
No. F-49297 J. Steve Daniel, Judge

No. M2002-00543-CCA-R3-CD - Filed August 22, 2003

The appellant, Kenneth Strickland, was convicted by a jury in the Rutherford County Circuit Court of possession of .5 grams or more of cocaine with the intent to deliver or sell. The trial court sentenced the appellant to twelve years incarceration in the Tennessee Department of Correction. On appeal, the appellant argues that the evidence is insufficient to support his conviction. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOE G. RILEY and JAMES CURWOOD WITT, JR., JJ., joined.

Brad W. Hornsby and Aaron S. Guin, Murfreesboro, Tennessee (on appeal); and G. Wayne Davis, Nashville, Tennessee (at trial), for the appellant, Kenneth Strickland.

Paul G. Summers, Attorney General and Reporter; Peter M. Coughlan, Assistant Attorney General; William C. Whitesell, Jr., District Attorney General; and William A. Osborne, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

In July 2000, the Rutherford County Grand Jury returned an indictment charging the appellant with possession of .5 grams or more of cocaine with the intent to deliver or sell. A trial on this charge was held on November 15 and 16, 2000.

The facts underlying the appellant's conviction are largely undisputed. Kenneth Cooper, a confidential informant, and Detective Nick Watson, of the La Vergne Police Department, set up a "reverse sting" in which the appellant would purchase a kilo of cocaine from Detective Watson for a purchase price of $23,500. After several conversations regarding the transaction, the three men

agreed to meet at a BP gasoline station on February 17, 2000. From this location, the three men immediately proceeded to the Food Lion grocery store on Murfreesboro Road. Detective Watson had previously arranged for a surveillance team to be waiting at the Food Lion.

Upon their arrival at the grocery store, Detective Watson contacted Lieutenant Al Watson, who was to act as his "supplier." Lieutenant Watson brought Detective Watson a bag containing a small, clear, plastic sample bag of cocaine and a "kilo"of cocaine. In reality, the "kilo" was sugar which had been hardened and packaged to resemble cocaine. The appellant felt of the "kilo" twice and inspected the sample package. Then the appellant confessed that he did not have the money to purchase the "kilo," and he returned the bag containing the sample and the "kilo" to Lieutenant Watson. The appellant pled with Detective Watson to allow him until the next day to attempt to obtain the funds to purchase the kilo and asked Cooper to accompany him while he attempted to obtain the money. Whereupon, Cooper and the appellant traveled around Nashville, ultimately collecting approximately $10,000. The appellant inquired about purchasing one half of a kilo of cocaine, but Detective Watson was reluctant to make such a sale.

The next day, February 18, 2000, after agreeing to sell the appellant one half of a kilo of cocaine, Detective Watson again met the appellant at Food Lion. Upon his arrival, the appellant sat in the detective's undercover vehicle and the two men discussed the impending transaction and future drug deals. The appellant then showed Detective Watson a large amount of money in his billfold, but he did not give the money to Detective Watson. After seeing the money, Detective Watson obtained the one half of a "kilo" and the sample package from Lieutenant Watson and handed the bag containing the drugs to the appellant. Detective Watson then relayed the "take down phrase" and the appellant was arrested. Detective David Loftis of the La Vergne Police Department was part of the "take down" team and he saw the appellant in possession of the bag containing the cocaine at the time of the arrest. Subsequent to the arrest, the police searched the appellant and discovered the bag containing the cocaine, $9,073 in cash, a diamond cluster ring, other jewelry, and cellular telephones.

The contents of the bag were examined by Agent Glen J. Glenn of the Tennessee Bureau of Investigation crime laboratory. Agent Glenn confirmed that the "kilo" did not test positive for controlled substances, but revealed that the sample bag contained 2.9 grams of cocaine.

Based upon the foregoing evidence, the jury found the appellant guilty of possession with intent to deliver or sell .5 grams or more of cocaine and fixed a fine in the amount of $100,000. The trial court sentenced the appellant as a Range II multiple offender to twelve years incarceration. On appeal, the appellant argues that the evidence adduced at trial is insufficient to support his conviction.

II. Analysis

When an appellant challenges the sufficiency of the convicting evidence, the standard of review by an appellate court is "whether, after viewing the evidence in the light most favorable to

the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); Tenn. R. App. P. 13(e). The State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. See State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions concerning the credibility of witnesses and the weight and value to be afforded to the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh or reevaluate the evidence. Id. Because a jury conviction removes the presumption of innocence with which a defendant is initially cloaked at trial and replaces it on appeal with one of guilt, a convicted defendant has the burden of demonstrating to this court that the evidence was insufficient. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

In order to obtain the appellant's conviction, the State was required to prove that the appellant knowingly possessed cocaine with the intent to deliver or sell. See Tenn. Code Ann. § 39-17-417(a)(4) (1997). This offense is classified as a Class B felony if it involved .5 grams or more of a substance containing cocaine. Id. at (c)(1). Additionally, "'[k]nowing' refers to a person who acts knowingly with respect to the conduct or circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist." Tenn. Code Ann. § 39-11-302(b) (1997).

The appellant first argues that the evidence adduced at trial did not establish that he knew that the package he received contained cocaine. To this end, we note that in State v. Brown, 915 S.W.2d 3, 7 (Tenn. Crim. App. 1995), this court stated that "[p]roof that a possession is knowing will usually depend on inference and circumstantial evidence." The evidence as produced at trial revealed that immediately prior to his arrest, the appellant had been in frequent contact with Detective Watson and the confidential informant, Cooper, regarding the potential purchase of a large amount of cocaine. Additionally, evidence regarding the conversations between Cooper, Detective Watson, and the appellant illustrate the appellant's awareness that he was discussing the possibility of a large drug transaction. Moreover, upon having insufficient funds with which to purchase the "kilo" of cocaine from Detective Watson on February 17, 2000, the appellant "begg[ed]" Detective Watson to allow him to have one more day to come up with the payment. Detective Watson agreed to this proposal. Cooper then rode with the appellant as he drove through Nashville, ultimately collecting approximately $10,000 to be used to purchase the cocaine. We conclude that these facts demonstrate the appellant's knowledge that he was purchasing cocaine on February 18, 2000.

The appellant further argues that he did not feel, test, or weigh the package of drugs on February 18, 2000; therefore, he had no way of knowing that the package contained cocaine. However, the evidence revealed that the appellant tested and felt the drugs several times on the day prior to his arrest, the date originally scheduled for the drug transaction. Moreover, Lieutenant Watson testified that the appellant looked at the sample bag of cocaine on the day of his arrest. Additionally, Detective Watson stated that the appellant had "opened up the package" prior to his arrest. Accordingly, the jury could have reasonably inferred that when the appellant arranged to again meet with Detective Watson on February 18, 2000, after obtaining enough money to purchase

one half a kilo of cocaine, the appellant was aware that the package contained cocaine. This issue is without merit.

The appellant also contends that the State failed to establish that he was in possession of the cocaine. This court has explained that

> [p]ossession of a controlled substance can be based on either actual or constructive possession. The State may establish constructive possession by demonstrating that the defendant has the power and intention to exercise dominion and control over the controlled substance either directly or through others. In essence, constructive possession is the ability to reduce an object to actual possession.

Brown, 915 S.W.2d at 7 (citations omitted). It is well established that a person's mere presence in an area where drugs are discovered is not, standing alone, sufficient to establish that the person possessed the drugs. See State v. Cooper, 736 S.W.2d 125, 129 (Tenn. Crim. App. 1987). Additionally, "mere association with a person who does in fact control the drugs or property where the drugs are discovered is insufficient to support a finding that the person possessed the drugs." State v. Bigsby, 40 S.W.3d 87, 90 (Tenn. Crim. App. 2000).

In the instant case, Detective Watson testified that he gave the appellant the package containing the drugs prior to ordering the "take down." Additionally, Detective Loftis stated that when he approached Detective Watson's vehicle to arrest the appellant, he saw the appellant "holding the bag that we had previously used to transport the narcotics." Both the plastic bag carrying the sample and the package supposedly containing cocaine were contained within the bag on the appellant's lap. Testing of the contents of the bag revealed that the substances therein contained 2.9 grams of cocaine. Accordingly, we conclude that the proof demonstrated that the appellant did possess the cocaine.

Finally, we address whether the evidence proved that the appellant possessed the cocaine with the intent to deliver or sell. Tennessee Code Annotated section 39-17-419 (1997) provides that "[i]t may be inferred from the amount of a controlled substance or substances possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance or substances were possessed with the purpose of selling or otherwise dispensing." Agent Glenn of the TBI crime laboratory testified that his examination of the substance verified that it was 2.9 grams of cocaine. Moreover, it is clear from the appellant's conversations with Detective Watson and Cooper that the appellant planned to purchase one half a kilo or a whole kilo of cocaine. We conclude that the evidence sufficiently supports the appellant's possession of the cocaine with the intent to deliver or sell.

III. Conclusion

Based upon the foregoing, we affirm the judgment of the trial court.

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NORMA McGEE OGLE, JUDGE